

NSF Policies on Harassment and Discrimination in NSF-Funded Awardee Programs

High Energy Physics Advisory Panel

Bob Cosgrove

Equal Opportunity
Compliance Manger for NSF
Awardee/Conducted
Programs
Office of Diversity and
Inclusion



Friday
May 31, 2019



“The National Science Foundation (NSF) will not tolerate sexual harassment, other forms of harassment, or sexual assault within the agency, at awardee organizations, field sites, or anywhere NSF-funded science and education is conducted.”

- Federal Register Notice announcing new NSF term and condition regarding sexual harassment, other forms of harassment, and sexual assault (83 FR 47940), September 21, 2018



NSF and Title IX

- NSF's Title IX regulation: 45 CFR §618
 - Prohibits discrimination on the basis of sex in educational programs and activities receiving Federal financial assistance such as NSF awards.
 - ODI limits its operational jurisdiction to NSF-funded programs and activities at grantee institutions.
 - Sexual and gender-based harassment are forms of discrimination prohibited by Title IX.
 - Requires awardees to designate a Title IX Coordinator, adopt and publish a grievance (complaint procedures) and provide notification for both



NSF Awardee Programs – Title IX Compliance Methods

Pre-Award Compliance	Done via submission of an electronic certification at the time of proposal submission. Can do individual pre-award reviews on a case-by-case basis (i.e, indicators of non-compliance are known prior to award decision)
Post-Award Compliance	The goal of post-award compliance reviews is to ensure grantee compliance with NSF civil rights regulations, provide meaningful, technical assistance to all grantees that help strengthen their current compliance efforts as well as identify and report on best practices.
Complaints of Discrimination and Harassment	NSF also is responsible for processing complaints of discrimination from institutions that receive NSF funding.



Who Must Comply With Title IX?

- Recipients of NSF awards that operate education programs
- Limited to education programs or activities; applies only to the participants of education programs (i.e., students and employees) operated by the awardee.
- Title IX compliance is also triggered by:
 - Grant or donation of federal property and interests in property.
 - Detail of Federal personnel and training by Federal personnel.
- Does not apply to Federal agencies.



Title IX Compliance Reviews

- NSF conducts at least two on-site Title IX reviews of NSF funded programs at colleges and universities per fiscal year
- Reviewed programs include academic departments that receive NSF grants
- Site selection criteria include Total dollar amount of NSF grants to the university, Number of PI receiving grants, type of program/department, known Title IX compliance issues
- Coordinate site selection with other agencies to avoid duplicative efforts



Complaints of Discrimination

- NSF investigates complaints of discrimination, harassment and retaliation under Title IX.
- Employee complaints (i.e. faculty, staff, postdocs) are usually referred to the US Equal Employment Opportunity Commission.
- Complainants may choose between the awardee Title IX complaint process or file with NSF
- NSF limits complaint investigations to those programs, PIs, students that receive NSF funding.
- Anonymous complaints may be filed, but there may be limits to what can be investigated or remedied without Personal Identifiable Information.



NSF Polices On Harassment

- Recent attention to sexual misconduct has led NSF to implement several new initiatives. NSF has actively addressed sexual misconduct in NSF Awardee programs funded by academic and research institutions
 - Media reports of sexual harassment by prominent scholars and researchers in academia
 - #MeToo movement, also #astroSH, #MeTooPhD, #MeTooSTEM and others
- It is a violation of NSF's Title IX regulations when a grantee institution fails to address known incidents of sexual misconduct.



Why is this important to NSF?

- Safe and civil environments allow scientific ecosystems to thrive, while unsafe environments disrupt the entire scientific ecosystem, discouraging scientists -- particularly young scientists -- harming their careers and scientific progress
- NSF's mission is to promote the progress of science; to advance the national health, prosperity, and welfare; and to secure the national defense; and for other purposes
- NSF recognizes that to enable scientists, engineers and students to work at the outermost frontiers of knowledge, the agency must be a role model for teamwork, fairness, and equity



What Has NSF Done to Address Harassment?

- Office of Diversity and Inclusion (ODI) hired a senior manager to administer NSF Awardee compliance with Title IX.
- NSF is now conducting Title IX Compliance reviews of institutions
- ODI provided Congressional testimony in February, 2018 as a part of their review of sexual harassment and misconduct in science



What Has NSF Done? (Cont'd)

- The Director established an internal sexual harassment taskforce to examine and collect promising practices and model codes of conduct
- NSF launched a dedicated web portal [www.nsf.gov/harassment] to consolidate policies and procedures, promising practices, and frequently asked questions relating to sexual and other forms of harassment
- The Director issued Important Notice 144, dated February 8, 2018.



NSF Important Notice #144

- Issued February 8, 2018 <https://www.nsf.gov/pubs/issuances/in144.jsp>
- “NSF does not tolerate sexual harassment, or any kind of harassment, within the agency, at grantee organizations, field sites, or anywhere NSF-funded science and education are conducted.”
- Announcement of the development of the new term and condition that will require grantee organizations to report findings of sexual harassment, or any other kind of harassment regarding a PI or co/PI or any other grant personnel.
- NSF expects all awardees to establish and maintain clear and unambiguous standards of behavior to ensure harassment-free workplaces wherever science is conducted. This includes activities at all research facilities and field sites and during conferences and workshops.
- Announces ODI’s establishment of a web portal dedicated to information on how to address harassment in NSF-funded programs <https://www.nsf.gov/od/odi/harassment.jsp>



ODI Bulletin No. 18-01

- “As an NSF employee you must inform ODI immediately if you become aware of a harassment issue in an NSF-funded program, project, or institution, including a complaint of sexual harassment, whether the issue occurred on campus, in the field, at a conference, at a facility, or elsewhere.”
- NSF Program Division/Office staff (Program Officers, Divisions Directors and other staff) who award and monitor grants may be the first in NSF to get these reports from the Principal Investigators (PIs) Office of Sponsored Projects Staff, other personnel working on awards or with students, postdocs
 - They refer reports to ODI.



NSF Proposal & Award Policies & Procedures Guide (PAPPG)– Conference Attendance Codes of Conduct

- PAPPG – Section II, E, 7
- 2019 PAPPG contains the new term & condition plus conference funding proposals will be required to have a policy/conduct code addressing sexual/other forms of harassment and that includes clear and accessible means of reporting policy/code violations.
- Conference code of conduct and conduct policies must be disseminated to conference participants prior to attendance at the conference as well as made available at the conference itself.



Harassment Notification Term and Condition

- https://www.nsf.gov/od/odi/term_and_condition.jsp
- Published in the Federal Register March 5, 2018
- Public comment period provided, ended May 4, 2018
- NSF received 198 comments from students, faculty, universities, and various scientific and university organizations.
 - Roundtables were held with university organizations and Federal science agency partners
- Task team of NSF staff from ODI, General Counsel and Policy offices reviewed each comment (May-August 2018)
- Some modifications to the final notification published 9/21/18 reflect some of the public comment



Sexual Harassment Term and Condition Notification Requirements

- Requires the Authorized Organizational Representative to notify NSF:
 - 1) of any findings/determinations regarding the PI/PD or co-PI/co-PD that demonstrate a violation of awardee codes of conduct, policies, regulations or statutes relating to sexual harassment, other forms of harassment, or sexual assault; or
 - 2) if the awardee places the PI/PD, or co-PI/co-PD on administrative leave or imposes an administrative action relating to a finding or investigation of a violation of awardee policies, codes of conduct, statutes or regulations relating to sexual harassment, other forms of harassment, or sexual assault
- Other personnel supported by an NSF award must also remain in compliance with awardee policies or codes of conduct, statutes, regulations, or executive orders but other personnel are not required to be reported.



Harassment Notification Term & Condition - Definitions

- **Sexual harassment:** May include but is not limited to gender or sex-based harassment, unwelcome sexual attention, sexual coercion, or creating a hostile environment, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.
- **Other Forms of Harassment:** Non- gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders



Harassment Notification Term & Condition – Definitions (Cont.)

- **Finding/Determination:** The final disposition of a matter involving sexual harassment or other form of harassment under organizational policies and processes, to include the exhaustion of permissible appeals exercised by the PI or co-PI, or a conviction of a sexual offense in a criminal court of law.
- **Administrative Leave/Administrative Action:** Any temporary/interim suspension or permanent removal of the PI or co-PI, or any administrative action imposed on the PI or co-PI by the awardee under organizational policies or codes of conduct, statutes, regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/ administrative duties, or presence on campus.



NSF Response to Reporting under the new Term and Condition

- In reviewing the notification, NSF will consider, at a minimum, the following factors:
 - a. The safety and security of personnel supported by the NSF award;
 - b. The overall impact to the NSF-funded activity;
 - c. The continued advancement of taxpayer-funded investments in science and scientists; and
 - d. Whether the awardee has taken appropriate action(s) to ensure the continuity of science and that continued progress under the funded project can be made



NSF Response to Reporting under the new Term and Condition (Cont'd)

- NSF will consult with the designated awardee AOR (Authorized Organizational Representative) or designee(s) and other awardee officials identified by the AOR (i.e. Title IX Coordinator, General Counsel, Human Resources).
- NSF may, if necessary:
 - Initiate the substitution or removal of the PI or any co-PI
 - Reduce the award amount; or
 - When neither of the above are available or adequate, suspend or terminate the award



Harassment Notification Term & Condition and Title IX

- This term and condition does NOT impact NSF's Title IX regulations and is distinct from NSF's Title IX regulations.
- This term and condition is part of the PAPPG, which is revised annually and has its own compliance and enforcement mechanisms.
- Title IX is focused on the accountability of the awardee institution.
- This term and condition is focused on the ability of the PI and Co-PI to participate in their NSF funded research and the safety and security of people working on the award.



Harassment Notification Term & Condition - Reporting Findings of Harassment

- Awardee findings/determinations and placement of a PI or co-PI on administrative leave or the imposition of an administrative action must be conducted in accordance with organizational policies and processes. They also must be conducted in accordance with federal laws, regulations, and executive orders.
- Notification to NSF must be provided regardless of whether the behavior leading to the finding/ determination, or placement on administrative leave, or the imposition of an administrative action occurred while the PI or co-PI was carrying out award activities.
- Only the identification of the PI or co-PI is required. Personally identifiable information regarding any complainants or other individuals involved in the matter must not be included in the notification.



Does the term and condition cover conduct that occurs prior to the effective date of the term and condition?

- Yes, the conduct of a PI or co-PI under investigation by the awardee that occurred prior to the effective date of the term and condition is covered if:
 - The finding/determination or imposition of administrative leave/administrative action occurs after October 22, 2018; and either:
 - The new award was made on or after October 22, 2018; or
 - There was a funding amendments to an award on or after October 22, 2018 that was made prior to this date.



Questions?

Thank You!

